

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*
Case No. 18-op-45090

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THE MANUFACTURER
DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED
COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Evidence 201, the Manufacturer Defendants hereby request that the Court take judicial notice of the following documents in support of the Manufacturer Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint. All exhibit references correspond to the exhibits attached to the Declaration of Charles C. Lifland, filed contemporaneously in support of the above-referenced motion.

1. Exhibit A: Letter from Food and Drug Administration ("FDA") to Physicians for Responsible Opioid Prescribing ("PROP") (Sept. 10, 2013);
2. Exhibit B: The complaint in *State of Ohio ex rel. Mike DeWine v. Purdue Pharma L.P. et al.*, Case No. 2017 CL 261 (Ohio Ct. Com. Pleas May 31, 2017);
3. Exhibit C: The prescription drug label for NUCYNTA® ER approved by the FDA as revised December 2016;

4. Exhibit D: The prescription drug label for OXYCONTIN® approved by the FDA as revised December 2016;

5. Exhibit E: The prescription drug label for ACTIQ® approved by the FDA as revised December 2016;

6. Exhibit F: The prescription drug label for FENTORA® approved by the FDA as revised December 2016;

7. Exhibit G: The prescription drug label for SUBSYS® approved by the FDA as revised December 2016;

8. Exhibit H: The prescription drug label for KADIAN® approved by the FDA as revised December 2016;

9. Exhibit I: The prescription drug label for OPANA® ER approved by the FDA as revised December 2016;

10. Exhibit J: The prescription drug label for EXALGO® approved by the FDA as revised September 2016;

11. Exhibit K: An FDA press release entitled *FDA to Approve Shared System REMS for TIRF Products* (Dec. 29, 2011); and

12. Exhibit L: Transmucosal Immediate Release Fentanyl (“TIRF”) Risk Evaluation and Mitigation Strategy (“REMS”).

All these exhibits are properly subject to judicial notice. The FDA Letter (Exhibit A) and REMS (Exhibit L) are “matter[s] of public record and there is no dispute between the Parties about [their] authenticity.” *Ramirez v. Medtronic, Inc.*, 961 F. Supp. 2d 977, 984 (D. Ariz. 2013); see, e.g., *Gustavson v. Wrigley Sales Co.*, 961 F. Supp. 2d 1100, 1113 n.1 (N.D. Cal. 2013)

(taking judicial notice of FDA response letter); *Natco Pharma Ltd. v. Gilead Scis., Inc.*, 2015 WL 5718398, at *1 n.2 (D. Minn. Sept. 29, 2015) (taking judicial notice of REMS).

Similarly, courts routinely take judicial notice of FDA-approved drug labels (Exhibits C-J) and press releases (Exhibit K). *See, e.g., Aaron v. Medtronic, Inc.*, 209 F. Supp. 3d 994, 1014 (S.D. Ohio 2016) (citing *Chapman v. Abbott Labs.*, 930 F. Supp. 2d 1321, 1323 (M.D. Fla. 2013) (FDA drug label)); *Kiker v. SmithKline Beecham Corp.*, 2016 WL 8189286, at *4 n.3 (S.D. Ohio Dec. 15, 2016) (press releases); *see also Beaver Cty. Ret. Bd. v. LCA-Vision Inc.*, 2009 WL 806714, at *7 (S.D. Ohio Mar. 25, 2009) (finding that accuracy of press releases cannot be reasonably questioned, and noting that “[p]ress releases also are self-authenticating under evidentiary rule 902(6)”).

Finally, the Ohio Attorney General’s Complaint (Exhibit B) is subject to judicial notice as it is a filing in a court of record. *See Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999) (“[F]ederal courts may take judicial notice of proceedings in other courts of record.”” (citation omitted)); *In re Huffy Corp. Sec. Litig.*, 577 F. Supp. 2d 968, 981-82 (S.D. Ohio 2008) (taking judicial notice of allegations made in complaint in another proceeding).

WHEREFORE, the Manufacturer Defendants respectfully request that the Court take judicial notice of the abovementioned exhibits.

Dated: May 25, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: May 25, 2018

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